

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

**No. 02-7857**

---

In Re: DOVON BROWN,

Petitioner.

---

On Petition for Writ of Error. (CR-95-144)

---

Submitted: February 6, 2003

Decided: February 13, 2003

---

Before WILKINS, MICHAEL, and SHEDD, Circuit Judges.

---

Petition denied by unpublished per curiam opinion.

---

Dovon Brown, Petitioner Pro Se.

---

Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Dovon Brown, a federal inmate, filed this petition for a writ of error seeking to have this court recall its mandate dismissing the appeal of the denial of his motion to vacate sentence under 28 U.S.C. § 2255 (2000). See United States v. Brown, No. 00-7254, 2000 WL 1707272 (4th Cir. Nov. 15, 2000) (unpublished). In the alternative, Brown requests that this court allow him to file a petition under 28 U.S.C. § 2241 (2000). In his petition, Brown alleges that his conviction and sentence are unconstitutional under the Supreme Court's decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and this court's cases applying Apprendi. Brown has failed to demonstrate extraordinary circumstances justifying recall of the mandate. See Calderon v. Thompson, 523 U.S. 538, 549-50 (1998). Moreover, we have held that Apprendi is not retroactively applicable in a § 2241 petition. See San-Miguel v. Dove, 291 F.3d 257, 261 n.2 (4th Cir. 2002). Accordingly, although we grant leave to proceed in forma pauperis, we deny Brown's petition for writ of error. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED